



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

SMALL BUSINESS / SELF-EMPLOYED DIVISION

November 20, 2008

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**MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS  
DIRECTORS, EXAMINATION AREA OPERATIONS**

**FROM:** David Alito /s/ David Alito  
Director, Collection

Monica Baker /s/ Monica Baker  
Director, Examination

**SUBJECT:** Re-issuance of Recommendations Regarding Assertion of  
Internal Revenue Code (IRC) 6700 and IRC 6701 Promoter  
Penalties

The purpose of this memorandum is to re-issue the interim guidance memorandum SBSE-05-110-016 for SBSE Collection Field function (CFf) employees and SBSE Examination Field function employees. This memorandum provides interim guidance regarding assertion of penalties under IRC 6700 and IRC 6701 resulting from approved investigations issued to the field by the SBSE Lead Development Center (LDC). Please ensure this information is distributed to all affected employees within your organization.

Although there is no all-inclusive definition of an "abusive tax promotion," the term has historically been defined as including any partnership, trust, investment plan, or any other entity or arrangement that is sold to a third party and is designed to be used or is actually used by a third party in obtaining tax benefits not allowed by law. This includes the non-filing of a tax return based on frivolous or constitutional arguments. A promoter of an abusive tax promotion is subject to penalties under IRC 6700 or IRC 6701. If the promotion is currently being promoted, the investigating agent will seek injunctive relief under IRC 7408.

The Internal Revenue Manual (IRM) 5.20.8.1.1 states that examiners conducting promoter investigations will contact the Area Abusive Tax Avoidance Transaction (ATAT) Coordinator for Collection through their group manager. When the examiner has completed the promoter investigation and is considering assertion

of penalties under IRC 6700 or IRC 6701, the examiner should notify the local Collection ATAT Coordinator, who will assign a Revenue Officer (RO) if one has not already been assigned. A list of Collection ATAT Coordinators can be found by accessing the abusive shelter web site at <http://abusiveshelter.web.irs.gov/AbusivePromotions/CollectionGroups.htm>.

The examiner may indicate that it appears the promoter case does not have immediate collection potential; and the ROs analysis may determine that there is little current collection potential based on known assets. However, experience has shown that promoters frequently conceal assets and cloud their financial picture through a wide variety of sophisticated means which often make it difficult, if not impossible, to immediately determine the true collection potential of these accounts with a high degree of confidence. Assets currently concealed or placed beyond our reach may well surface during subsequent investigations. Therefore current collectibility should not be a consideration when determining whether to assert a penalty under IRC 6700 or IRC 6701. There may be rare situations when it is arguably appropriate to consider collectibility, such as when the promoter is deceased and there are no assets in the promoter's estate. Unless such a rare situation exists, when Collection is contacted in accordance with IRM 5.20.8.1.1, the examiner should be advised that the penalty should be assessed regardless of collectibility.

All recommendations for nonassertion of the penalty must be approved by the group manager. Once the manager has approved the nonassertion, the examiner will forward a written notification to the Lead Development Center (LDC) of their decision to not assert prior to closing the lead. The notification will include a brief explanation of the basis for not asserting the penalty. The LDC will forward a copy of the notification to Collection Policy.

If you have any questions, a member of your staff can contact Tracy Rypien, Senior Program Analyst, Collection Policy or Georgia Stefan, Technical Advisor, LDC.

cc: [www.irs.gov](http://www.irs.gov)